

REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 19-36 were in the application, claim 22 has been cancelled and claims 19, 20, and 25-28 have been amended. Claims 29-36 were previously withdrawn.

The objection to the drawings, and rejection of claim 22 under 35 USC 112, first paragraph has been rendered moot by the cancellation of claim 22.

Claims 19-21, 26 and 27 were rejected as being indefinite under 35 USC 112, second paragraph.

Claim 19 has been amended to clarify that the metallic profile is what is being claimed, as best illustrated in Figure 4, and to further present the claim in proper U.S. claim format. Claims 20, 21, and 25-28 have been amended for clarity, and to overcome the rejection, and it is believed that these amendments have rendered the rejection moot.

Claims 19-28 were rejected under 35 USC 103(a) as being obvious over Rasmussen, U.S. Patent no 6,428,127 in view of Pochet, U.S. Patent no. 6,231,142.

To establish a *prima facie* case of obviousness based on a combination of references, there should be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant. In re Raynes, 7 F.3d 1037, 1039, 28 U.S.P.Q.2D (BNA) 1630, 1631 (Fed. Cir. 1993); In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2D (BNA) 1443, 1445 (Fed. Cir. 1992). However, the search for a teaching or suggestion should not be rigid, and a more flexible approach to a determination of obviousness should be used so as to avoid a conflict with common sense. KSR International Co. v. Teleflex Inc. et al., 2007 U.S. Lexis 4745 U.S. Supreme Court, April 30, 2007. In this decision, however, the Supreme Court reaffirmed that obviousness can not be established by a hindsight combination to produce the claimed

invention. *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q.2D (BNA) 1885, 1888 (Fed. Cir. 1991). It is the prior art itself, and not the applicant's achievement, that must establish the obviousness of the combination.

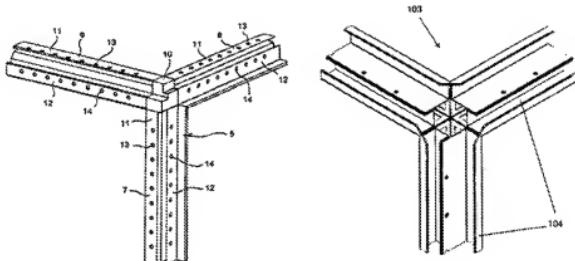


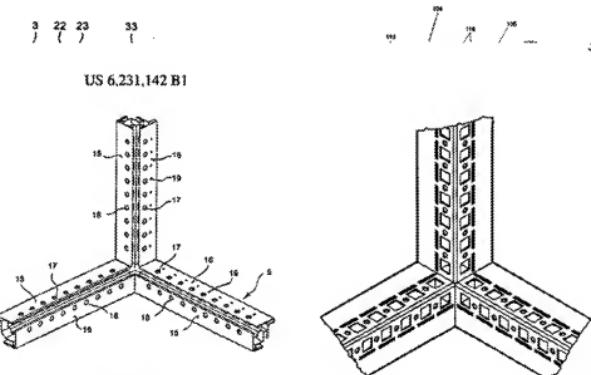
FIG. 6

The two figures above compare the '142 Patent and Fig. 6 of the present invention. We can see that in the inventive cabinet, on the outside of the structure, there is a substantial difference in the details when compared to the '142 Patent structure, that is, in the inventive structure, all of the vertical sides are the same. This does not happen with the cited patent, as this utilizes structures with different cross sections so that opening 4 may be finished with wing 5 which works in conjunction with detail 6 of door 3, in such a manner as to form the means for sealing.

This wing 5 does not exist in the inventive structure. This results from the different geometries between the inventive metallic profile and that of the reference. In

the cited reference, the framework structure 2 of cabinet 1 consists of twelve interconnected cross sections. These are made up of four vertical cross sections 7, four horizontal cross sections 8 and four transversal cross sections 9. Although the transversal sections of vertical cross sections 7 and of the horizontal cross sections 8 are identical, transversal cross section 9 has a slightly different transversal cross section.

In the inventive structure, all of the uprights have the same cross section 104, consequently, all of the structure's uprights present exactly the same transversal geometry.

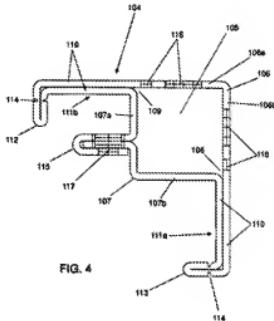
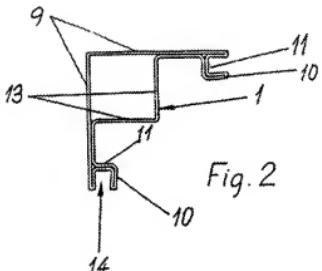


Comparing the structures on the inside, we can see that both are different, again because they use cross sections with different geometries. Note that the uprights in the cited reference, between openings 17-19, a channel is fitted, while in the inventive

structure, no shaped channel is needed.

Given the numerous structural differences between the structures, it cannot be said that the different geometry structures of the present invention would be obvious to one skilled in the art, in fact, the cited reference leads one away from the present invention.

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The examiner cited Pochet as disclosing a rim, yet Pochet also leads one away from the present invention. Note that Pochet requires the provision of specific sealing channels, defined by 9-10-11, and to receive a seal 14, structures not found in nor needed by the present invention, as illustrated in Fig. 4 above. Again, this is due to a difference in geometry from the present invention. Combining Pochet with Rasmussen might only lead one to include the sealing channels discussed above. Of course, that would require some significant re-engineering of Rasmussen, and likely only further

complicate the structure of Rasmussen, with no perceived benefit, as Rasmussen does address sealing, though in a different way.

In view of the above, one skilled in the art would not find the present invention to be obvious, nor find any teaching or suggestion to lead him to provide a structure as the applicant has created. Rather, one skilled in the art would be led away from the applicants' invention, and it is believed that claims 19-21, and 23-28 are patentable over the cited art.

Based on the above, favorable consideration and allowance of the application is respectfully requested. However, should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

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